

Congress of the United States
Washington, DC 20515

April 10, 2013

The Honorable Chuck Hagel
Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Hagel:

The recent Air Force case of Lieutenant Colonel (LtCol) Wilkerson in which a commander overturned an Air Force officer's court-martial conviction for sexual assault was a significant setback to the progress made in the fight against sexual assault within the military. That decision has raised legitimate concerns among Members of Congress regarding not only the appropriateness of the decision to dismiss the adjudged conviction and sentence, but also the rationale for the underlying statutory authority upon which the commander's decision was based.

We agree with you that a single commander who was not personally involved or witness to the judicial proceedings should not have the ability to reverse a decision reached by a fair and impartial jury. It seriously degrades confidence in our military justice system and compromises the rights of victims of sexual assault.

The March 12th letter from Lieutenant General (LTG) Franklin which the Air Force presented to us today clearly demonstrates the cultural challenges that we have worked to combat. As the convening authority, LTG Franklin supplanted his personal judgment for that of the independent judicial body which is trained and tasked with evaluating all evidence before the court and making an impartial and factual determination.

LTG Franklin's written explanation reinforces the importance of reforming the role of convening authority. His letter highlights just how dangerous and detrimental the convening authority's central role in the military justice system can be. It is alarming that LTG Franklin substituted his own opinion of the credibility of the victim and other witnesses for that of the impartial jury panel who personally observed and heard the witnesses testify at the trial. Accordingly, this letter raises many questions, but in particular, about the experience and training a convening authority has to make this decision.

In his letter, LTG Franklin acknowledges that he attempted to reconcile some matters of evidence and differences in witnesses' respective versions of events, even though he did not participate in any of the judicial proceedings. He uses his consideration of LtCol Wilkerson's willingness to waive his right to remain silent when speaking to investigators as proof of innocence even though LtCol Wilkerson chose not to testify under oath before the court-martial,

preventing cross examination by the Prosecution. LTG Franklin also acknowledges that his decision was influenced by witness statements and evidence that was either inadmissible or not offered at the trial. LTG Franklin even cites Wilkerson's polygraph as an element he considered in determining Wilkerson's innocence, even though as we understand it, Wilkerson failed his polygraph. More egregiously, he relies on the views of children staying as guests in the Wilkerson's home and neighbors and other individuals who claimed to have observed the Wilkersons as evidence that there was no "tension" in their marriage.

Even more troubling is LTG Franklin's statement that the victim turned down offers of a ride home prior to the alleged assault perpetrating the "blame the victim" culture that inhibits effective prevention and prosecution of sexual assaults in the military.

We appreciate the initial steps you have taken in directing a Department-wide review of Article 60, UCMJ. We also commend your acknowledgement of the necessity for reform of the dysfunctional elements of Article 60, specifically the convening authority's ability to supplant his or her sole discretion for that of an impartial jury panel.

Finding the most meaningful and effective legislative solution to these inherent issues of Article 60 is a priority of ours as we continue to work with other members of the HASC on this matter and as we draft the FY2014 NDAA. We are committed to creating a solution to directly address the failures of the system as illustrated in the *Wilkerson* case and ensure that this never happens again.

Respectfully,



Michael R. Turner
Member of Congress



Niki Tsongas
Member of Congress